

srp.

:1:

**HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 2372 OF 1996.**

Jalindar Nivrutti Gavali  
Age 43 years, Occu: Service,  
R/at: Plot No. 42, Old Santosh Nagar,  
Vijapur road, Solapur 413 004. ..Petitioner.

Versus.

1) The Superintending Engineer,  
MESB, Solapur Circle Office,  
Old Mill Compound, Solapur.

2) The Superintending Engineer,  
MESB, Nashik Circle Office,  
Viduyt Bhavan, Nashik Rd,  
Nashik - 422 101.

3) MESB, A Statutory Body  
constituted under the Indian  
Electricity Act, 1948,  
through its Secretary having his  
Office at Prakashgad,  
Bandra (E), Mumbai 51.

4) S. L. Patwardhan.

5) D. R. Gunja.

6) P. W. Wankhede.

7) Shaikh Chand.

Respdt. No. 4 to 7 :

Adult, Occu: Service and  
all through respondent no.2

8) Maharashtra State Electricity  
Distribution Co., Limited  
Through: Managing Director,  
Sanjay Bhatia, having his office  
at "Prakashgad" Station Rd,  
Bandra (East), Mumbai - 51.

..Respondents.

---

Mr. K. K. Ghaisas for the petitioner.

Mr. P. P. Chavan i/b M/s. Little & Co., for the  
respondent nos. 1 to 3 and 8.

**CORAM: S. B. MHASE &  
D.G.KARNIK, JJ.**

**DATE: JULY 6, 2007.**

**ORAL JUDGMENT (PER D. G. Karnik, J.).**

1. Heard learned counsel for the parties.  
Petitioner was appointed as a Lower Division Clerk under  
the respondent no.3, i.e., the Maharashtra State

:2:

Electricity Board, on 2nd September 1978. On 30th March 1980 the petitioner passed 37th Lower Departmental Examination for being eligible to be considered for promotion to the post of Upper Division Clerk. By order dated 20th February 1992, the petitioner was promoted to the post of Upper Division Clerk. The order of promotion stated that the petitioner was granted a deemed date of promotion viz. 20th August 1980. This was on the basis that the petitioner had passed the examination for being eligible to be promoted to the post of Upper Division Clerk in the year 1980 within three attempts. As per Rules then prevalent the employees who had passed the examination within three attempts were considered senior to the employees who had passed the examination after three attempts.

2. It appears that negotiations were held between the labour unions of the workers working under the respondent no.3 and respondents regarding grant of deemed date of promotion. In pursuance of the said negotiations guidelines regarding deemed date of promotion to be granted to the employees passing the departmental examination within three attempts was modified by circular No. 140. According to the respondent no.3 on proper interpretation of Circular No. 140 issued on 7.3.1994 the petitioner was not entitled to be granted a deemed date of promotion with effect from 20th August 1980, but was entitled to the promotion with effect from the actual date of promotion, i.e., 20th February 1992.

:3:

Accordingly by order dated 30th June 1994 the petitioner was informed that his deemed date of promotion was withdrawn and he would be held to be promoted only with effect from 20th February 1992. That communication dated 30th June 1994 is impugned in this petition.

3. Though several grounds were urged before us relating to the interpretation of Circular Nos. 121 and 140 we do not consider it necessary to adjudicate upon the said contentions. In our opinion this petition can be disposed of on the short ground that the petitioner was not given an opportunity of being heard before the withdrawal of his deemed date of promotion.

4. Admittedly, by order dated 20th February 1992 the petitioner was granted promotion with a deemed date of promotion as 20th August 1980. The deemed date of promotion was granted to the petitioner after the petitioner's case was considered by the Special Selection Committee for review, the selections and promotions. In view of the said deemed date of promotion, the petitioner was put in a seniority list at a particular place. By modifying the date of promotion from 20th August 1980 to 30th June 1994 the petitioner would lose seniority in the seniority list and would be placed much below. Thus modifying the deemed date of promotion and placing the petitioner way below in the seniority list will affect his civil rights. In the circumstances the petitioner should have been granted an opportunity of hearing before

passing the impugned order / communication.

5. In our opinion, the granting an opportunity of hearing to the petitioner was not an empty formality. It is the contention of the petitioner that he was not covered by the modified Circular No. 140 and he is entitled to retain his deemed date of promotion. This contention has not been considered in the impugned order. In fact the petitioner has not been given an opportunity to raise this contention or any other contention. Since, admittedly no opportunity of hearing was granted to the petitioner the intimation dated 30th June 1994 and the Office Order, if any, on the basis of which the said communication was sent to the petitioner withdrawing his deemed date of promotion is required to be quashed and set aside and are accordingly quashed and set aside.

6. It is clarified that the respondent would be entitled to take a fresh decision in the matter after giving an opportunity of hearing to the petitioner in the matter.

7. During the pendency of the petition, respondent no.3 Board was divided into four separate Corporations and the services of the petitioner appear to have been transferred to the Maharashtra State Electricity Distribution Company Limited, which has been added as respondent no.8. This order would also bind the respondent no.8 also. Rule made absolute to the extent

indicated above. :5:

(D.G.KARNIK, J.)

(S.B.MHASE, J.)